



April 1, 2022

By Email

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 205499-1090
rule-comments@sec.gov

**Re: Release No. 34-93613; File No. S7-18-21
Reporting of Securities Loans**

Ms. Countryman:

The Securities Industry and Financial Markets Association (SIFMA)¹ appreciates the opportunity to supplement our January 7, 2022 comment letter on the U.S. Securities and Exchange Commission’s (the “SEC” or “Commission”) proposing release on Rule 10c-1 (“Proposed Rule 10c-1”) under the Securities Exchange Act of 1934 (“Exchange Act”), which would for the first time implement a regime requiring the reporting of identifying data and material negotiated terms of securities lending transactions, as well as other securities lending market information, to a registered national securities association (“RNSA”), and the subsequent public dissemination by the RNSA of select securities lending transaction terms and market information.² SIFMA is grateful that the Commission has afforded additional time to provide further comments on Proposed Rule 10c-1 “in light of the proposed Exchange Act rule regarding short sale disclosure.”³

¹ SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our members, we advocate on legislation, regulation, and business policy affecting retail and institutional investors, equity, and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² Reporting of Securities Loans, Exchange Act Release No. 93613 (Nov. 18, 2021), 86 FR 69802 (Dec. 8, 2021) (“Rule 10c-1 Proposing Release”).

³ See Reopening of Comment Period for Reporting of Securities Loans, Exchange Act Release No. 94315 (Feb. 25, 2022), 87 FR 11659 (Mar. 2, 2022) (reopening the comment period for 30 days).

SIFMA believes that the SEC’s February 25, 2022 release proposing Rule 13f-2 under the Exchange Act (“Proposed Rule 13f-2”), Form SHO, and related amendments to Regulation SHO and the consolidated audit trail (“CAT”)⁴—all of which are expressly and specifically intended to collect detailed information on short positions and short sale and other associated transactions—further underscores and supports the recommendations from our prior comment letter that short positions and short arranged financing in connection with prime brokerage client short activities should not be treated as loans of securities for purposes of Proposed Rule 10c-1.

This supplemental comment letter is intended to expand upon the comments and recommendations made in SIFMA’s January 7, 2022 comment letter. SIFMA reasserts by reference each of the comments and recommendations contained in our previous comment letter.

I. Proposed Rule 13f-2 Further Highlights the Need for Separation of Securities Lending Reporting and Short Sale Activity and Position Reporting

In passing Section 984(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Congress directed the Commission “to promulgate rules that are designed to increase the transparency of information available to brokers, dealers, and investors, with respect to the loan or borrowing of securities.”⁵ SIFMA supports the SEC’s goal of increasing transparency in the securities lending market, and believes that such transparency would be best achieved by ensuring that only traditional securities lending activity, recognized as such under both standard market practice and longstanding regulatory practice⁶ (*i.e.*, securities lending transactions between counterparties that are made pursuant to a written securities lending agreement and documented as a securities loan on the lender’s books and records), should be reportable by the lender⁷ under Proposed Rule 10c-1.

In addition to the rulemaking mandate under Section 984(b), Congress separately directed the Commission pursuant to Section 929X of the Dodd-Frank Act to “prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate

⁴ Short Position and Short Activity Reporting by Institutional Investment Managers, Exchange Act Release No. 94313 (Feb. 25, 2022), 87 FR 14950 (Mar. 16, 2022) (“Rule 13f-2 Proposing Release”).

⁵ Pub. L. 111-203, § 984(b), 124 Stat. 1376 (2010) (“Dodd-Frank Act”).

⁶ As noted in our prior letter, for decades there has been a clearly understood distinction under established securities laws and regulations between a securities loan entered into under a securities loan agreement and a short position established by a broker-dealer governed by a broker’s account agreement—including under the Dodd-Frank Act itself, as described herein.

⁷ As noted in our initial comment letter, SIFMA agrees with the SEC that the lender (or lending agent, as applicable) is generally best positioned to accurately and efficiently provide Rule 10c-1 information to the RNSA and recommends that the SEC maintain the current proposed structure requiring that lenders bear the reporting obligation. Agent lenders that lend securities on behalf of beneficial owners (which loans make up the significant majority of the overall securities lending market) already have direct access to, and established books and records systems in place to capture, the securities lending transaction details that Proposed Rule 10c-1 seeks to capture. By contrast, if borrowers were to have the reporting obligation instead of lenders, borrowers would still be obliged to obtain from the agent lenders certain data elements because borrowers would not have direct access to the source records for such loans.

amount of the number of short sales of each security, and any additional information determined by the Commission” every month.⁸ This distinct rulemaking mandate under a different section of the Dodd-Frank Act illustrates Congress’s intent to bifurcate the reporting of securities lending transactions from the reporting of short positions and short sale activity—a mechanism that the SEC is now proposing to implement through Proposed Rule 13f-2 and Form SHO.

As the SEC acknowledged in the Rule 13f-2 Proposing Release, FINRA and many exchanges already offer publicly available data on short sale activity.⁹ For example, short positions are already properly included as part of “short position reporting” under the existing FINRA short interest reporting requirements (reporting by clearing brokers of gross settled firm and customer short positions), which FINRA is considering expanding.¹⁰ The Rule 13f-2 Proposing Release states that the information collected through Proposed Rule 13f-2 and Form SHO would be intended to supplement this existing publicly available data and “fill an information gap for market participants and regulators by providing insights into the lifecycle of a short sale.”¹¹

SIFMA believes that the Commission’s decision to establish a separate reporting regime to capture short positions and short sale activity strongly supports the recommendation in our initial comment letter that these elements should not be captured under the reporting requirements of Proposed Rule 10c-1. As discussed in detail in our initial comment letter, SIFMA believes that, not only are short positions not “stock loans” for purposes of Proposed Rule 10c-1, but that including them could result in serious data issues and double counting that could cause significant confusion in the markets and harm to investors. Moreover, SIFMA believes the proposal of Proposed Rule 13f-2 only further highlights our previously-stated concern that capturing short transactions under Proposed Rule 10c-1 would lead to unnecessary overlap in reporting regimes. To avoid such data issues and reporting regime overlap, SIFMA reiterates our recommendation that a securities loan should, for the purposes of Proposed Rule 10c-1, be defined as to “enter into a transaction in which one person, on behalf of itself or another person (the lender or the lending agent), will temporarily lend to a counterparty (the borrower) certain securities (i) pursuant to a written securities lending agreement, (ii) against a transfer of collateral, and (iii) documented as a securities loan on the lender’s books and records” and, furthermore, that such definition expressly exclude short positions, short arranged financing in connection with prime brokerage client short activities, and repurchase agreements.

⁸ Pub. L. 111-203, § 929X(a) (inserting new Section 13(f)(2) to the Exchange Act).

⁹ Rule 13f-2 Proposing Release, 87 FR at 14953–54.

¹⁰ See FINRA Regulatory Notice 21-19 (June 4, 2021), available at <https://www.finra.org/sites/default/files/2021-06/Regulatory-Notice-21-19.pdf>.

¹¹ Rule 13f-2 Proposing Release, 87 FR at 14952.

II. Rule 13f-2 Proposing Release Analysis Also Supports that Securities Lending Data Should Be Reported *No Earlier Than* the End of Each Business Day and that Public-Facing Data Should be Aggregated

Even with the exclusion of all short positions/short sale activity from the reporting requirements under Proposed Rule 10c-1, SIFMA remains concerned that publication of securities loan data on a transaction-by-transaction basis could still expose investment strategies to the detriment of the firms and their underlying customers. As the SEC correctly notes in the Rule 13f-2 Proposing Release with respect to short sale activity, aggregating collected data prior to publication can significantly reduce the risk of trading strategy leakage. For instance, the Rule 13f-2 Proposing Release states that the publication of aggregate gross short position data and certain related activity data would “provide valuable transparency to market participants and regulators” while at the same time mitigating the potential negative economic effects of the reporting requirement and avoiding “the potential chilling effect” that such public disclosure might have on the relevant market.¹² SIFMA believes the same to be true of securities lending data, and we reiterate our recommendation that transaction-by-transaction data be reported to the RNSA and made available to regulators, but that the RNSA analyze and normalize the reported transaction data to provide aggregated and, where appropriate, averaged transaction terms that do not expose firm and customer investment strategies, and that better reflect the transaction terms available to lenders and borrowers in the securities lending market.

SIFMA likewise believes that the SEC’s analysis of the benefits of delayed reporting and publication of data that are described in the Rule 13f-2 Proposing Release also hold true in the context of securities lending transaction data reporting under Proposed Rule 10c-1. Proposed Rule 13f-2 would require an entity with a reporting obligation to report information to the SEC within 14 calendar days after the end of the calendar month.¹³ The SEC would then publish aggregated information derived from reported data within one month after the end of the reporting calendar month.¹⁴ In support of these reporting timelines, the Commission states that imposing a delay prior to publication would “help to reduce the risk of imitative trading activity by market participants and help to protect . . . proprietary trading strategies”.¹⁵ However, while the Commission acknowledges that delaying both the reporting and the publication of the data may somewhat lessen its relevance,¹⁶ it determined that the aforementioned benefits would outweigh any such concerns and still yield relevant information. By contrast, under Proposed Rule 10c-1, an entity with a reporting obligation (*i.e.*, the lender) would be required to report securities loan transaction data to the RNSA within 15 minutes after a loan is effected or

¹² *Id.*, 87 FR at 14952, 14953, 14955.

¹³ *Id.*, 87 FR at 14955.

¹⁴ *Id.*

¹⁵ *Id.*; *see also id.*, 87 FR at 15010 (describing how a shorter timeline “could increase the risk of copycat strategies”).

¹⁶ *Id.*, 87 FR at 15010.

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modified, and the RNSA would in turn be required to publish such data as soon as practicable.¹⁷ SIFMA believes that, in addition to the concerns raised in our initial comment letter that intraday reporting of securities lending transaction data would result in the publication of incomplete and inaccurate data that would not be useful—and indeed could be harmful—to market participants, many of the considerations raised by the SEC in support of delaying the reporting and publication of Proposed Rule 13f-2 data would similarly apply to the reporting of securities loan transaction data pursuant to Proposed Rule 10c-1. Accordingly, SIFMA reiterates our recommendations under our prior comment letter that securities lending transaction data be reported *no earlier than* the end of the business day and, furthermore, that the SEC implement a staged regulatory regime to allow the RNSA and SEC to analyze reported securities lending transaction data and assess its potential utility to the market (as well as any potential risks to the lender or lending agent, underlying customers, or other market participants) prior to imposing rules to make the data available to the public on an aggregated basis.

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SIFMA appreciates the opportunity to expand upon the comments and recommendations made in our January 7, 2022 comment letter regarding the Rule 10c-1 Proposing Release in light of the Rule 13f-2 Proposing Release. SIFMA thanks the Commission Staff for its consideration of our recommendations and would welcome the opportunity to meet with the Commission Staff again to discuss our recommendations and any other aspects of Proposed Rule 10c-1. If you have any questions or require additional information, please do not hesitate to contact us by calling Rob Toomey at [REDACTED] or Joe Corcoran at [REDACTED].

With kindest personal regards,



Kenneth E. Bentsen, Jr.

President and CEO

Cc: The Hon. Gary Gensler, Chair
The Hon. Hester M. Peirce, Commissioner
The Hon. Allison Herren Lee, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
Mr. Haoxiang Zhu, Director, Division of Trading and Markets
Mr. David Saltiel, Deputy Director, Division of Trading and Markets

¹⁷ See Rule 10c-1 Proposing Release, 86 FR at 69812.